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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 3, 2001

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS010028

Ex Parte: In the matter of
Adopting Revisions to the
Rules Governing Credit for
Reinsurance

ORDER ADOPTING REVISIONS TO RULES

WHEREAS, by order entered herein February 26, 2001, all interested persons were ordered to take notice that the Commission would consider the entry of an order subsequent to March 29, 2001, adopting revisions proposed by the Bureau of Insurance to the Commission's Rules Governing Credit for Reinsurance to update references to an outdated publication, unless on or before March 29, 2001, any person objecting to the adoption of the proposed revisions filed a request for a hearing with the Clerk of the Commission:

WHEREAS, the February 26, 2001, Order also required all interested persons to file their comments in support of or in opposition to the proposed revisions on or before March 29, 2001;

WHEREAS, as of the date of this Order, no request for a hearing has been filed with the Clerk of the Commission;

WHEREAS, as of the date of this Order, no comments have been filed with the Clerk of the Commission;

WHEREAS, the Bureau has recommended that the proposed revisions be adopted; and

THE COMMISSION, having considered the proposed revisions and the Bureau's recommendation, is of the opinion that the attached proposed revisions should be adopted;

THEREFORE, IT IS ORDERED THAT:

(1) The revisions to Chapter 300 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Credit for Reinsurance," which amend the rule at 14 VAC 5-300-130, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective May 1, 2001;

(2) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the adoption of the revisions to the rule by mailing a copy of this Order, including a copy of the attached revised rule, to all insurers, joint underwriting associations, group self-insurance pools, group self-insurance associations, and reinsurers licensed by or otherwise registered with the Commission, and subject to Article 3.1 of Chapter 13 of

Title 38.2 of the Code of Virginia or otherwise authorized by Title 38.2 to reinsure risks; and by forwarding a copy of this Order, including a copy of the attached revised rule, to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations; and

(3) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.

CREDIT FOR REINSURANCE

14VAC5-300-130. Letters of credit qualifying for § 38.2-1316.4 credit under 14 VAC 5-300-110.

A. The letter of credit must be clean. It cannot be conditioned on the delivery of any other documents or materials. It shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented.

B. The letter of credit must be irrevocable. It must provide that it cannot be modified, except for an increase in face amount, or revoked without the consent of the beneficiary, once the beneficiary is established.

C. The letter of credit must be unconditional. It shall indicate specifically that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain preference to any other agreements, documents or entities, except as provided in subdivision K 1 ~~below~~ of this section.

D. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for such letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

E. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

F. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which automatically renews the letter of credit for a time certain should the issuer of the same fail to affirmatively signify its intention to non-renew upon expiry and which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen

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clause" shall provide for a period of no less than 30 days notice prior to expiry date for nonrenewal.

G. The letter of credit shall state whether it is subject to and governed by the laws of this Commonwealth, the ceding ~~insurers~~ insurer's state of domicile or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 500), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

H. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 500), or any successor publication, then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article ~~49~~ 17 of Publication 400 500 or any successor publication, occur.

I. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to the applicable definitions contained within § 38.2-1316.1 of the Act.

J. When a letter of credit, issued by a financial institution not recognized by the Act and this chapter as a qualified United States financial institution authorized to issue letters of credit, is subsequently confirmed by a qualified United States financial institution, as described in subsection I of this section, then the following additional requirements shall be met:

1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

2. The "evergreen clause" shall provide for a period of no less than 30 days' notice prior to expiry date for nonrenewal.

K. Reinsurance agreement provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

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a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provision in such agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(1) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(2) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

(3) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

(4) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

c. All of the provisions of subdivision 1 of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in subdivision 1 of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

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a. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subdivision 1 b (3) of this subsection; and/or

b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of subdivision 1 b (4) of this subsection, any amounts that are subsequently determined not to be due.

3. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then such reinsurance agreement may in lieu of subdivision 1 b of this subsection, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.

L. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Commission unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement.